

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH O. OWENS JR.,
Plaintiff,
v.
ACHTERBERG, et al.,
Defendants.

No. 2:20-cv-0935 CKD P

ORDER

Plaintiff is a California prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. On May 14, 2020, the court screened plaintiff's complaint as the court is required to do under 28 U.S.C. § 1915A(a). The court dismissed plaintiff's complaint for failure to state a claim upon which relief can be granted with leave to amend and provided plaintiff with instructions and guidance as to the contents of his amended complaint. Plaintiff has now filed an amended complaint.

As plaintiff now knows, the court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

1 In order to avoid dismissal for failure to state a claim a complaint must contain more than
2 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
3 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
4 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
5 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
6 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
7 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
8 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.
9 at 678. When considering whether a complaint states a claim upon which relief can be granted,
10 the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and
11 construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
12 U.S. 232, 236 (1974).

13 The court has reviewed plaintiff’s amended complaint and finds that it also fails to state a
14 claim upon which relief can be granted under federal law. Plaintiff’s amended complaint must be
15 dismissed. The court will provide plaintiff one final opportunity to state a claim upon which
16 relief can be granted in a second amended complaint.

17 As in his original complaint, plaintiff has failed to demonstrate that the conditions alleged
18 resulted in a deprivation of plaintiff’s constitutional rights. See Ellis v. Cassidy, 625 F.2d 227
19 (9th Cir. 1980). For example, plaintiff asserts he has been retaliated against for exercise of his
20 First Amendment rights, but he fails to identify any protected conduct that was the basis for
21 retaliation. Again, in order to state a claim for retaliation, plaintiff must point to facts indicating a
22 causal connection between adverse action and protected conduct. Watison v. Carter, 668 F.3d
23 1108, 1114 (9th Cir. 2012).

24 Plaintiff is reminded that any challenge to prisoner disciplinary proceedings which
25 resulted in the revocation of good conduct sentence credit must be brought in a petition for writ of
26 habeas corpus and not a 42 U.S.C. § 1983 action unless the revoked sentence credit has been
27 restored. See Edwards v. Balisok, 520 U.S. 641, 646-47 (1996).

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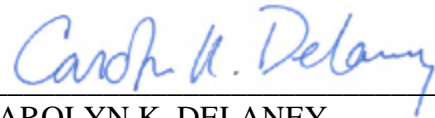
1 Finally, plaintiff is informed again that the court cannot refer to a prior pleading in order
2 to make plaintiff's second amended complaint complete. Local Rule 220 requires that any
3 amended complaint be complete in itself without reference to any prior pleading.

4 In accordance with the above, IT IS HEREBY ORDERED that:

5 1. Plaintiff's amended complaint is dismissed.

6 2. Plaintiff is granted thirty days from the date of service of this order to file a second
7 amended complaint that complies with the requirements of this order, the Civil Rights Act, the
8 Federal Rules of Civil Procedure, and the Local Rules of Practice. The second amended
9 complaint must bear the docket number assigned this case and must be labeled "Second Amended
10 Complaint." Failure to file a second amended complaint in accordance with this order will result
11 in a recommendation that this action be dismissed.

12 Dated: November 4, 2020



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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